

UNITED STATES OF AMERICA 94 FERC ¶ 61,080
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Duke Energy Corporation
Carolina Power & Light Company
South Carolina Electric & Gas Company
GridSouth Transco, LLC

Docket No. EL01-13-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued January 25, 2001)

In this order, we grant the petition for declaratory order filed by Duke Energy Corporation (Duke), Carolina Power & Light Company (CPL), South Carolina Electric & Gas Company (SCE&G) and GridSouth Transco, LLC (GridSouth) (referred to collectively as "the petitioners"), as discussed below. We conclude that the petitioners' proposed accounting treatment for start-up costs associated with the establishment of the proposed GridSouth regional transmission organization (RTO), with the modification discussed herein, is acceptable. However, GridSouth must submit a separate filing pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994), to seek to recover specific costs that it has incurred.

Background

On October 16, 2000, Duke, CPL, SCE&G (the GridSouth transmission owners) and GridSouth submitted a compliance filing¹ to comply with Order No. 2000.² In their RTO filing, GridSouth and the transmission owners requested authorization and approval to establish GridSouth as an RTO. The filing included an open access transmission tariff and various agreements that the transmission owners represented would create a for-profit transco that meets the minimum requirements for an RTO as specified in Order No. 2000.

¹Docket No. RT01-74-000, pending.

²Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), 65 Fed. Reg. 809 (January 6, 2000), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092, 65 Fed. Reg. 12,088, 90 FERC ¶ 61,201 (2000).

Their filing anticipated a start-up or "independence" date of December 15, 2001, when GridSouth could be ready to assume functional control of the participants' transmission facilities.

On November 3, 2000, the petitioners filed a petition for declaratory order in the present docket seeking "up-front" approval of their proposed accounting treatment for start-up costs associated with the establishment of the RTO. The petitioners state that they anticipate spending over \$100 million in start-up costs for the period May 15, 2000 to December 15, 2001. They propose that start-up costs directly associated with GridSouth activities will be separately captured on the individual GridSouth transmission owners' books and recorded as a receivable from GridSouth. These receivables will accrue carrying charges. After GridSouth is formed, incurred costs will be transferred to GridSouth, and GridSouth will record an associated payable to the transmission owners in Account 223 (Advances from Associated Companies).

The petitioners state that GridSouth will record the transferred start-up costs in Accounts 301 (Organization), 303 (Miscellaneous Intangible Plant) and various plant accounts for physical assets. In addition, they state that costs associated with hiring personnel, arranging financing, labor and benefits for employees, payroll taxes, rent expense and carrying charges will be recorded in Account 186 (Miscellaneous Deferred Debits). According to the petitioners, start-up costs deferred in Account 186 will be transferred to Account 182.3 (other Regulatory Assets) once the Commission approves their inclusion in the Formula Rate used to calculate the transmission service charge in Schedule 9 of the GridSouth Open Access Transmission Tariff. GridSouth will request an amortization period in connection with its request for depreciation rates in a subsequent filing pursuant to section 205 of the FPA. The unamortized balance of Account 182.3 will be included in the determination of rate base investment for Formula Rate purposes.

The petitioners state that the above methodology is appropriate because it is consistent with Commission precedent in both electric and gas orders that allow a newly-formed enterprise to recover the start-up costs incurred by the investor-utilities using a similar methodology.³ They also contend that approval of the accounting treatment for

³Petitioners cite to PJM Interconnection, L.L.C, 93 FERC ¶ 61,056 (2000) (ruling that certain facilities costs incurred by transmission owners on behalf of an independent system operator (ISO) could be recovered in the ISO's transmission rates, inclusive of carrying charges); Sierra Pacific Power Company and Nevada Power Company, 87 FERC ¶ 61,077 at 61,335, reh'g denied, 88 FERC ¶ 61,058 (1999) (if applicants determine that

(continued...)

costs deferred in Account 186 for Formula Rate purposes is necessary to permit GridSouth to defer these costs; and that, without such approval, GridSouth would be forced to absorb the start-up costs. The petitioners state that, before they make the financial commitment to establish the RTO, they first need the Commission's assurance that its proposed accounting procedure is acceptable.

Notices, Interventions, and Protests

Notice of the petitioners' filing was published in the Federal Register, 65 Fed. Reg. 75,694 (2000), with comments, protests, and interventions due on or before December 15, 2000. Timely, unopposed motions to intervene were filed by ElectriCities of North Carolina, Inc., Piedmont Municipal Power Agency, Cities of Orangeburg and Seneca, South Carolina, Oglethorpe Power Corporation, American Forest & Paper Association, Georgia Transmission Corporation, Central Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, and New Horizon Electric Cooperative, Inc.

In a Joint Protest, numerous intervenors⁴ contend that the petitioners are unclear whether they are seeking approval for accounting purposes only, or whether they are also seeking pre-approval for the recovery of costs booked in accordance with the proposed accounting procedure. Joint Protestors express concern that, because the petition lists specific categories of start-up costs and specific costs that will be booked to Account 186, Commission approval may be interpreted as pre-approving these costs as "just and reasonable." They argue that, if this is the case, the petition should be rejected because there has been no showing that the start-up costs at issue are reasonable and prudently incurred expenses. Rather, Joint Protestors contend that the proper accounting treatment is to book start-up costs as construction work in process (CWIP) and, if such investment is later sought to be recovered through rates, it is subject to a prudence inquiry.

³(...continued)

rate recovery of any portion of costs associated with a proposed merger is probable, they may account for that portion as a regulatory asset and amortize it to income commensurate with its rate recovery); Portland Natural Gas Transmission System, 76 FERC ¶ 61,123 (1996), on reh'g, 80 FERC ¶ 61,134 (1997) (pipeline start-up costs capitalized and included in the rates of new pipeline company).

⁴ElectriCities of North Carolina, Inc., Piedmont Municipal Power Agency, Cities of Orangeburg and Seneca, South Carolina, Central Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, and New Horizon Electric Cooperative, Inc. filed the Joint Protest and are referred to as the "Joint Protestors."

Joint Protestors argue that the precedent cited by the petitioners relate to the building of substantial capital-intensive facilities such as transmission lines and, thus, are distinguishable from the start-up costs incurred by GridSouth (that, according to the Joint Protestors, merely promotes the start-up of an entity that will perform a subset of functions already performed by the GridSouth transmission owners).

Alternatively, if the Commission grants the petition, Joint Protestors seek clarification: (1) that the petitioners only seek and the Commission only ratifies the proposed accounting treatment and that a section 205 filing is required for recovery of incurred costs; and (2) regarding the allocation of GridSouth start-up costs between wholesale transmission customers and the transmission owners' bundled native load.

On January 2, 2001, the petitioners filed an answer to the Joint Protest. In response, the petitioners contend that the Joint Protestors have misconstrued the petition, and that the petition does not request Commission pre-approval for rate recovery of start-up costs. The petitioners state that they recognize the need for a section 205 filing prior to rate recovery. Rather, the petitioners claim that they seek a declaratory order in the nature of accounting conclusions. Further, the petitioners contend that the issue of allocation of start-up costs between native and wholesale customers is beyond the scope of the petition and should be addressed in the GridSouth RTO proceeding, Docket No. RT01-74-000.

Discussion

Procedural Matter

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Rule 213(a)(2) of the Commission Rules of Practice and Procedure⁶ generally prohibits an answer to an answer, unless otherwise permitted by the decisional authority. In this case, we will grant the petitioners' request to respond to the Joint Protest, because the pleading clarifies the arguments and enhances our understanding of the facts.

⁵18 C.F.R. § 385.214 (2000).

⁶18 C.F.R. § 385.213(a)(2) (2000).

Declaratory Order

The Commission grants the petition and accepts the petitioners' proposed accounting treatment for start-up costs associated with the establishment of the proposed GridSouth RTO. GridSouth is entitled to defer the recovery of start-up costs until such time that the RTO is operational, at which time depreciation of the "asset" must commence. The petitioners' proposal is consistent with the treatment of start-up costs that the Commission has accepted in similar contexts. For example, in PJM Interconnection, we found acceptable PJM's proposal to recover through its formula rates \$136 million in costs, inclusive of carrying charges, because these costs were appropriately incurred by PJM in acquiring the information technology and other assets from its transmission owners that PJM uses to conduct its operations.⁷ We disagree with Joint Protestors' claim that start-up costs for GridSouth should be treated differently because they may be repetitive of functions already performed by the existing transmission owners. GridSouth is expending funds to further its plans to comply with the Commission's Order No. 2000. As we noted in Order No. 2000, we want to assure utilities that they will not be disadvantaged by participating in an RTO.⁸

However, we will require one modification to the petitioners' proposal. The petitioners propose that start-up costs directly associated with GridSouth activities will be separately captured on the individual GridSouth transmission owners' books and recorded as a receivable from GridSouth. Until such time that GridSouth is formed, the transmission owners cannot record a receivable from a non-existent entity. Rather, start-up costs incurred by the transmission owners prior to the formation of GridSouth should be recorded in Account 186 (miscellaneous deferred debt). This modification will result in accurate accounting disclosure.

Joint Protestors' primary concern is that the petitioners are seeking pre-approval for the recovery of costs booked in accordance with the proposed accounting procedure. In their answer, the petitioners state that Joint Protestors are mistaken, and that the petitioners intend to submit a separate section 205 filing prior to rate recovery.⁹ The petitioners did not request pre-approval for rate recovery and we are not granting it here.

⁷93 FERC ¶ 61,056 (2000).

⁸FERC Stats. & Regs. ¶ 31,089 at 31,172-73.

⁹See also Petition for Declaratory Order at 7, where petitioners state that they will request an appropriate amortization period in a request for depreciation rates in a future filing with the Commission pursuant to section 205 of the FPA.

We accept here only petitioners' proposed accounting treatment for start-up costs. Recovery of start-up costs requires a section 205 filing prior to recovery.¹⁰

Further, Joint Protestors request clarification regarding the allocation of GridSouth start-up costs between wholesale and native load customers. The petitioners respond that this request is beyond the scope of their petition. We agree with the petitioners. This issue will be addressed when GridSouth applies under section 205 for the formula rate and related allocation of costs.

The Commission orders:

(A) The petition for declaratory order filed by Duke Energy Corporation, Carolina Power & Light Company, South Carolina Electric & Gas Company and GridSouth Transco, LLC is hereby granted, as modified and discussed in the body of this order.

(B) The petitioners' answer to the Joint Protest is hereby accepted.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

¹⁰Likewise, while the Commission agrees that, for accounting purposes, the transmission owners and GridSouth may accrue carrying charges on the start-up costs, the appropriateness of the recovery of carrying charges and the amount of such charges will be subject to scrutiny in the section 205 proceeding.